

Testimony: HB 5267

House Committee on Family and Children Services

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There is a growing body of evidence in the psychological literature that joint physical custody should be a rebuttable presumption of the court. We appreciate that this bill is attempting to reflect this body of evidence. However, we must oppose the bill as written based on the very limited conditions under which the court could deny joint custody in a custody dispute between parents.

Custody decisions should always be based upon the best interest of the child(ren).

There are many factors besides a) the fitness or willingness of a parent to share custody and b) residence in the same school district that affect the best interest of a children.

Some of these circumstances are listed below:

- a) Very young children (under the age of 4 or 5) often have differential attachments to their parents and cannot stand to be away from a primary caregiver for extended periods of time. Even experts with strong pro-father opinions do not encourage 3 or 4 days in a row away from a parent who has provided most of the young child's care.
- b) Very young children need highly predictable routines--feeding, sleeping, etc., and this is often not easily accomplished in 50/50 parenting situations where the parents are not both willing to follow the same routine or live a lifestyle that does not permit it or lack the skill to follow it.
- c) Older children and teenagers often have strong preferences about where and with whom they wish to live which are based on differences in levels of closeness to each parent, differences in levels of devotion and competence in their parents, differences in parents' geographic locations, differences in parents' time availability and other resources, and other rational considerations. These preferences should receive their fair measure of respect and consideration, but are not likely to under a joint custody presumption.
- d) Parents are often not equal in their availability to children. Parents who work very long hours or who travel frequently are likely to leave the

children with third parties or in day care situations when they could be spending this time with a loving parent in a home environment.

e) Parents should not be presumed to be equal in their competence/willingness/resources to support their children's health, safety, education, cognitive development, moral development, guidance and discipline, stability of lifestyle and family situation, hygiene, emotional security, access to love and affection, freedom from exposure to substance abuse and violence, and other critical needs, generally addressed in the Best Interest Factors under the Michigan Child Custody Act, because major differences in these areas often exist.

f) The research literature is essentially unanimous in the finding that children's exposure to serious to severe emotional conflict between their parents leads to serious adverse outcomes for their social, emotional, behavioral, physical, and educational development. The literature also supports the finding that children in joint physical custody arrangements with high conflict parents fare much worse than children in sole custody arrangements.

g) A burden of clear and convincing evidence is a high hurdle for a parent in one of the situations sketched out above to meet, and since only a tiny minority of cases ever makes it to a full evidentiary hearing, the pressure to yield to joint custody where it is not appropriate or to agree to an unfair and inappropriate divorce settlement in exchange for more parenting time may be enormous, as a result of which children will suffer.

Members of the Michigan Psychological Association who are highly knowledgeable about issues related to child custody would be pleased to work with drafters of this bill to have the bill adequately reflect the factors affecting the best interests of children in determining custody.